Supreme Court, U.S.
FILED

No. _____ 97 2066 MAY 14 1998

OFFICE OF THE CLERK

In The

Supreme Court of the United States

October Term, 1997

MANOUTCHEHR YADEGAR,

Petitioner,

vs.

THE MAIN SUSPECT MARIA CHRISTIN SAPERSTEIN YADEGAR, et al.,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

PETITION FOR WRIT OF CERTIORARI

MANOUTCHEHR YADEGAR
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Pro Se

QUESTION PRESENTED FOR REVIEW

Whether the Lower Court Judge erred in summary dismissal of plaintiff's civil rights without ruling on the merits of plaintiff's rights under 18 U.S.C. Section 1204, Federal Child Abduction Statute.

LIST OF PARTIES

All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

> The Main Suspect Maria Christin Saperstein Yadegar, aka Tamara Evensapir Yadegar; State of Israel; Mahin Shokrian; Said Shokrian; Joseph Nourmand; Barbara Reinecke; Nora A. Manella, U.S. Attorney (Criminal Division); FBI (Criminal Division) I realized the parties should be United States Government agencies.

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Federal Question Cause: 28:1331
U.S. District Court, Central District of California Case No. DC#CV-97-04112-LGB

JURISDICTION

18 USC Sec 1204; and § 1367. Supplemental jurisdiction

(a) Except as provided in subsections (b) and (c) or as expressly provided otherwise by Federal statute, in any civil action of which the district courts have original jurisdiction, the district courts shall have supplemental jurisdiction over all other claims that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution. Such supplemental jurisdiction shall include claims that involve the joinder or intervention of additional parties.

(b) In any civil action of which the district courts have original jurisdiction founded solely on section 1332 of this title, the district courts shall not have supplemental jurisdiction under subsection (a) over claims by plaintiffs against persons made parties under Rule 14, 19, 20, or 24 of the Federal Rules of Civil Procedure, or over claims by persons proposed to be joined as plaintiffs under Rule 19 of such rules, or seeking to intervene as plaintiffs under Rule 24 of such rules, when exercising supplemental jurisdiction over such claims would be inconsistent with the jurisdictional requirements of section 1332.

(c) The district courts may decline to exercise supplemental jurisdiction over a claim under subsection (a) if –

(1) the claim raises a novel or complex issue of State law,

(2) the claim substantially predominates over the claim or claims over which the district court has original jurisdiction,

(3) the district court has dismissed all claims over which it has original jurisdiction, or

(4) in exceptional circumstances, there are other compelling reasons for declining jurisdiction.

(d) The period of limitations for any claim asserted under subsection (a), and for any other claim in the same action that is voluntarily dismissed at the same time as or after the dismissal of the claim under subsection (a), shall be tolled while the claim is pending and for a period of 30 days after it is dismissed unless State law provides for a longer tolling period.

(e) As used in this section, the term "State" includes the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Historical and Statutory Notes Crimes and Criminal Procedure

STATEMENT OF THE CASE

Criminal and International Cases § 1204 International Parental Kidnapping Violation of United States Law and International Law.

To All Parties and to Their Attorneys of Record:

Respectfully plaintiff Manoutchehr Yadegar declares as follows:

I am the plaintiff in the instant action. I am over the age of 64 years and have personal knowledge of the facts set forth herein, if called as a witness, I could and would testify competently thereto as follows: Take notice that the Notice of Motion and Motion for Request for judiciary notice determination of procedure jurisdiction will move to the Supreme Court of the United States in Washington, D.C. for plaintiff the PETITION FOR A WRIT OF CERTIORARI.

The Plaintiff is living in the United States of America, and he is residing in the State of California, the County of Los Angeles. Fifty states are in the United States with different rules and policies and the Honorable Court is not only for the State of California but for the whole world (international) including the State of Israel jurisdiction of judiciary system by Constitutional law, the Supreme Court of the United States, over this case.

The nature of this case arose in 1986 in Israel with misrepresentation of marriage status by plaintiff former spouse in crime and criminal conspiracy of both sides advocates attached to religious court in Israel and then in United States.

1. Plaintiff wrongly was hostage and imprisoned for several years and for trying to prove that defendant's

action against plaintiff were malicious, untrue and unfounded.

More, Plaintiff believes the defendants' criminal conspiracy of M. Shokrian and S. Shokrian interference in the state of Israel resulted in the criminal conspiracies of defendant H. Joseph Nourmand incrimed with plaintiff former wife and Israeli authorities. The documentation was filed on February 17, 1998 in this court, with evidentiary proof submitted as Exhibit, see (Civil Minutes Order dated February 23, 1998) in order to take over his assets outside Israel. Plaintiff Statement dated March 12, 1997 to the United States Dept. of Justice, Immigration and Naturalization Service, to the attention of officer Mr. John M. Howland, District Adjudications Officer, and complaint letter dated May 13, 1997 from Law Offices of Attorney Fariborz Rouzbehani, Attorney and Counselor at Law. Attached Exhibit.

2. Plaintiff is informed and believes and hereon alleges that United States Federal Government Agencies both defendants, the U.S. Attorney and the Federal Bureau of Investigation (hereinafter FBI) are entities of the United States Federal Government.

3. Plaintiff is informed and believes and hereon alleges that this case involves a controversy arising out of Plaintiff's civil rights violation, and hence a federal question.

4. Plaintiff is informed and believes and hereon alleges that each of the defendants herein referred to have internationally and lawfully caused damages proximately resulting thereform to Plaintiff as alleged herein. Plaintiff will seek leave of court to amend this complaint to add new counts if that should become necessary.

5. Where, plaintiff prays a writ of certiorari for relief judgment as follows: For fraud and delay for parental rights, civil rights, human rights, loss of health and reputation, for general damages, financially and physically, enjoyments of family life, delay for return assets and properties, restitution of position and prestige in business and social circles, for loss of plaintiff's chance to see his children for 11 1/2 years of their childhood that he had been deprived of and court expenses and lawyers' fees to pay fines to the Israeli Courts in order to gain his freedom, from having to consent to divorce decree by force for translation from Hebrew to Farsi and English and for court action for cost of suing incurred herein in Israel and for translation again, and submitted response to the court in Israel for criminal conspiracy by force in Israel Courts for loss of his children for such other and further as the court may deem just and proper; for breach of contract with criminal conspiracy in the United States against plaintiff's civil rights.

6. Plaintiff has serious continuing and chronic respiratory illnesses as a result of wrongfully taken hostage and imprisonment.

7. The parties conspired against plaintiff's Iranian family and himself as they were enemies of both parties in crime (husband and wife dispute) in late 1986 in Israel.

The grounds of these cases has been risen with the matter related to the Israeli attorney's in both sides attached to the Religious Court, international kidnappers in crime by force cooperated shame designed with plaintiff ex-wife, in the state of Israel (without diplomatic

protection to protect plaintiff and his children's rights) in the state of Israel and now in United States attorney H. Joseph Nourmand has represented the defendants Mahin and Said Shokrian in the United States, but in fact defendant Nourmand also represented the plaintiff ex-wife, the main suspect and all the parties on behalf of the international organization of kidnappers and illegal traffickers in the crimes which affected in Israel courts by both sides attorneys.

Show Cause of H. Joseph Nourmand

Nourmand entered into a criminal conspiracy with Yadegar attorneys (Reinecke) to defeat Yadegar's cause of action against plaintiff former wife which took place in Iran in 1975, for breach of contract and fraud.

Second cause of action was conspiracy with Yadegar attorneys to defeat plaintiff's claims against Evensapir and her co-conspirators in Israel and U.S.A.

Third cause of action was in bad faith to suffer and delay of approximately more than 3 years the trial for fraud in the United States courts for breach of contract and intentional infliction of emotional distress in crime action.

Plaintiff has explained in this court that any attorney hired by him, in the past, whether in the state of Israel or here in the United States (State of California) behind the scene they were framing and conspiring and hiring the attorney against the plaintiff. Sometimes such attorneys acted as double-agents and forcing the plaintiff to change

his complaint for the resolution of marriage from criminal to civil status and/or given wrong advice.

Defendant Reinecke

FIRST CAUSE OF ACTION

(Breach of Contract)

Reinecke breached the aforementioned contract by failing to represent Yadegar in a zealous manner and without conflict, as directed by the California Supreme Court Rules, when she entered into a conspiracy with opposing counsel, H. Joseph Nourmand, to defeat Yadegar's causes of action against his former wife Tamar Yadegar.

Yadegar has been completed to retain the services of an attorney to prosecute this action, and is therefore entitled to reasonable attorney's fees and cost of suit.

SECOND CAUSE OF ACTION

(Unjust Enrichment)

Yadegar failed to receive the services as promised to him by Reinecke, and instead, Reinecke failed to represent Yadegar zealously and without conflict and participated in a conspiracy with H. Joseph Nourmand, to defeat Yadegar's claims against Tamar Yadegar.

THIRD CAUSE OF ACTION

(Breach of Covenant of Good Faith and Fair Dealing)

Implied in every contract is a covenant on the part of all parties to act in good faith in regard to their dealings

with each other. Yadegar has performed all conditions required by him to be performed in accordance with the terms and conditions of the parties' contract.

For the reasons stated above plaintiff family has been terrorized by Nourmand in both countries in the United States and Israel with the interference of Nourmand, and Nourmand client M. Shokrian and S. Shokrian, the cause of action still exists. Plaintiff request this Hon. Court to grant relief and order for prosecution of defendants based on judiciary notice determination of procedure to set trial.

Show Cause of Defendants

United States Federal Government Agencies

(U.S.A.O.) and Federal Bureau of Investigation (F.B.I.)

1. On or about January 12, 1995, Plaintiff submitted to the criminal division of the office of the U.S. Attorney a request for a criminal investigation against plaintiff's ex-wife Yadegar for kidnapping of their daughter, Leonora Yadegar, when she was a minor, from the United States to Israel, in violation of U.S. law (Federal Child Abduction Statute, 18 USC Section 1204).

2. On or about April 17, 1995, the U.S. Attorney, through her Assistant Jeffrey C. Eglash, without stating any reasons, declined to prosecute.

3. On or about May 18, 1995, Plaintiff requested from the F.B.I. to investigate the criminal activity of his ex-wife and submitted ample documentation to substantiate his position, but they too indicated that no federal criminal violation has occurred.

4. All of Plaintiff's other efforts including but not limited to the following have borne no fruit whatsoever to convince the U.S. Attorney and F.B.I. to prosecute plaintiff's ex-wife for her crimes.

5. On November 22, 1996, and on January 29, 1997, Plaintiff further requested from the Office of the U.S. Attorney, "and State Attorney" and F.B.I. with new and more documentation, with attachment Case No. SCO-38928 please herewith see Exhibit 1 document State Superior Court, Santa Monica, proved against plaintiff's ex-wife criminal activities and her co-conspirators, to prosecute his wife and again his pleas were unanswered.

6. Under federal law "and state law" and international law and Civil Rights Act, Plaintiff has a right to be protected from criminal activities of others and once Plaintiff has proven that he has become a victim of a crime, it is the obligation of the U.S. Attorney's Office and the Federal Bureau of Investigation to prosecute the offender(s).

7. Under the U.S. Constitution, the executive branch of the U.S. Government is empowered by the people to enforce the law of the land. The U.S. Attorney's Office and the F.B.I. are the entities in charge with and responsible for indicating people's rights. They are the representatives of the people and once a crime as been perpetrated, they have a constitutional obligation to defend the victims.

1. The Plaintiff hereby alleges that on January 12, 1995, Plaintiff submitted to the criminal division of the U.S. Attorney's office a request for a criminal investigation against the Plaintiff's ex-wife for kidnapping of their

daughter, etc., which was without any reasons declined to prosecute. The United States Federal Government Agencies (U.S.A.O.) refused to comply with victim of crime, and refused to honor their obligations and respect the Constitutional Law of the United States, as well as the Supreme Court of Justice to assist victims of crimes.

2. The number of complaints against the criminal activities of Defendant, Joseph Nourmand (and his clients), were refused to be responded and instead in the State Court were allowed to continue his activities and remove the Plaintiff's attorneys, which the United States Federal Court, Central District of California has all the documentations and evidence that the plaintiff has submitted and are on the file.

3. Plaintiff alleges and believes that the court and the Hon. justice judge are independent and very well recognize that the defendant should show respect to the law and the Government Agencies' delegations should assist the victims of the crimes not allowing the offenders to continue their unlawful and illegal activities.

4. The record of statement of Yadegar's attorney, Reinecke, shows on November 21, 1996, conference and review and revise the client's letter to the FBI and U.S. Attorney Office (time .50). Plaintiff filed the paperwork on November 22, 1996, which showed that defendant Reinecke was conducted into a conspiracy with opposing counsel, H. Joseph Nourmand, to defeat Yadegar's causes of action against his former wife, Tamara Yadegar.

5. In fact the Plaintiff entered to an agreement with Reinecke in order to pursue the prosecution and bring the Plaintiff's ex-wife to an early trial with the assistance of

the Federal Government Agencies (U.S.A.O.) and the FBI. Plaintiff believes that Reinecke was under pressure by the U.S. Attorney's supervisor who was her schoolmate and they studied law in the Los Angeles area, to participate against her client Yadegar.

Therefore, hereby Plaintiff respectfully requests from the court which has jurisdiction over this case to adjudicate against the defendants of this case. Respectfully submitted.

Therefore all I want is justice based on a fair decision. That is why I am here in this Honorable Court requesting justice with respect to the violation of the United States Law (State Law, International Law) under the constitutional law of the United States Supreme Court of Justice.

The petitioner prays for relief where, plaintiff prays a writ of certiorari for relief judgment as follows: For fraud and delay for parental rights, civil rights, human rights, loss of health, assets, business and reputation, for general damages, financially and physically, enjoyments of family life, delay for return assets and properties, restitution of position and prestige in business and social circles, for loss of plaintiff's chance to see his children for 11 1/2 years of their childhood that he had been deprived of and court expenses and lawyers' fees to pay fines to the Israeli Courts in order to gain his freedom, from having to consent to divorce decree by force for translation from Hebrew to Farsi and English and for court action for cost to sue incurred herein in Israel and for translation again, and submitted response to the Court in Israel for criminal conspiracy by force in Israel Courts for loss of his children for such other and further as the court may deem

just and proper; for breach of contract with criminal conspiracy in the United States against plaintiff's civil rights.

The matters contained herein are of my own knowledge and if called as a witness, I would competently testify thereto.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on May 8, 1998, Los Angeles, California.

REASONS FOR GRANTING THE WRIT

Civil-Rights Action under the Constitution Law of the United States Supreme Court, which is justice.

Memorandum of Points and Authorities —

Declaration of Manoutchehr Yadegar

Evidentiary Proof Submitted as Exhibit

I am the Plaintiff of this action and I testify that:

1. The Plaintiff hereby requesting the Honorable Court to assist with legal advise regarding the requirements of the United States District Court, Honorable Justice. If the Plaintiff has made any errors in his petitions pleas advise him the corrections and right procedures through your court clerk.

Plaintiff states that he was a wealthy and happy person and a family man when he came to this country and he was hoping to have better opportunities in this country to be more successful and live with a higher life standard than which he had previously. Unfortunately, because of the defendants' actions against him as a victim

he has not been able to move higher. Instead he has lost his life savings and now he is in debt himself. All of that happened because of the defendants' names in the original case which is in front of the honorable judges. Only because he did not have a law office with different attorneys specialized as the government agencies.

2. The status of this case is related to the universal declaration of Human Rights (United Nations) (The General Assembly proclaims) (Violation of Human Rights) between the nations with the status of democracy who are responsible to serve for the rights of the minorities by law between the nations IN ORDER FOR JUSTICE BE SERVED IN BOTH COUNTRIES.

LAW OF FREEDOM AND HUMAN RIGHTS

The purpose of this statement is to kindly request the Honorable Court to intervene on behalf of plaintiff. According to the principles mentioned at the PARIS VERSAILLE CONVENTIONS for FREEDOM AND HUMAN RIGHTS. In these conventions, all the heads of nations emphasize the importance of justice in democratic states and FREEDOM OF TRAVEL (International). No one should be illegally ARRESTED or IMPRISONED, no one should be TORTURED. Everyone should be aware of HIS RIGHTS AND BE ABLE TO appoint a lawyer and to defend himself.

At the Paris Convention great emphasis was put on FREEDOM! Unlawful IMPRISONMENT WAS CONDEMNED UNANIMOUSLY by all democratic states. This declaration was signed by the heads of all democratic

countries under the direction of excellency states of secretary general of the UN, Jr. Javier Perez de Cueillar (from the United States, the Honorable President George Bush signed the declaration).

Plaintiff's ex-wife, due to lies on affidavit testifying that they had been married in state of Israel, before the courts and Israeli Police the fact that the nature of the case is considered double criminal offense of suspected plaintiff's ex-wife's activities against plaintiff and plaintiff's children and his own wealth as shown by the documents. Based on KIDNAPPING OR HOSTAGE, FOR FRAUD INCLUDING conspiracy with a number of Israeli authorities in the illegal arrest and false imprisonment of plaintiff over 8 1/2 years, and commission of other acts of conspiracy to extract millions of dollars. In the name of fairness and equity, plaintiff respectfully requests of these criminal activities with the hope that it will lead to the INDICTMENT AND EXTRADITION OF THE SUSPECT TO FACE APPROPRIATE CRIMINAL CHARGES IN THIS COUNTRY. Based on the documents accompanied by showing of good cause and that the interests of justice will be served in the United States and in THE STATE OF ISRAEL. This is an appeal to both the United States Attorney General and the law enforcement.

Every Jew from every nation has the right to visit the state of Israel and that it will be a good and safe place, not only for its citizens and residents but also for any foreigner who happens to visit this country.

Plaintiff traveled to Israel with the status as a visitor with United States Alien Card (Green Card) No. A24128509 travel document and with the visa issued from

Israel General Consulate in Los Angeles No. 0333229 dated 28/5/86 and Visa No. (0782550 dated January 13, 1988) as a visitor. Please see the documents in the file enclosed. Unfortunately these U.S. documents were not considered by Israeli authorities. Plaintiff contacted the United States Consulate and requested help and diplomatic protection, since it was not exercised. The Consul offered to open a file number in order to keep the court documentation. Please see document enclosed in the file.

Behind the scene defendant continued to delay the process of this complaint without any reason, by obstructing the justice. Technically, through different connections including (plaintiff's sister and her husband, Mr. & Mrs. Shokrian). She has been successful so far. That's why plaintiff's complaint in this Honorable Court is for obtaining justice under the United States Law, so that he can seek proper remedies. All plaintiff wants is justice.

H. Joseph Nourmand represents the defendants Mahin Shokrian and Said Shokrian but in fact he represents the main suspect who is plaintiff's ex-wife and the parties who are her conspirators.

This is a classic case of the law being perverted by perjured testimony, Plaintiff faced since this arose in Israel in 1986 with the same parties at least. When he was in Israel he was lucky to achieve the results of actions according to decision given on June 2, 1992 by Israeli government, Supreme Court of Justice Case No. 5850-91/92 and Case No. 03322/14433 dated November 24, 1993 Israeli Headquarters of Police Force.

Defendants' fraudulent actions to deprive plaintiff of great love for his children suffered mentally by keeping

away his children from him, the acts of defendants were grossly wanton, willful and one with the express intent to causing him great and severe emotional distress as a result of carefully and maliciously calculating to strip plaintiff of both fortune and his children. The loss of health and suffering due to eight and a half years of wrongful imprisonment, unlawfully having planned to murder plaintiff or delay the justice so that he may die because of his health declining and attempt to delay the entire matter and to make any judgment plaintiff gets worthless.

The matters contained herein are of my own knowledge and if called as a witness, I could competently testify thereto.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on May 8, 1998, Los Angeles, California.

CONCLUSION

Indictment and extradition of the suspect to face appropriate criminal charges in this country to bring criminal prosecution against MARIA CHRISTIN SAPERSTEIN YADEGAR, aka. TAMARA EVENSAPIR YADEGAR et al.

Respectfully submitted,

MANOUTCHEHR YADEGAR
Plaintiff in pro se

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

MANOUTCHEHR YADEGAR, Plaintiff-Appellant, vs. MARIA SAPERSTEIN YADEGAR, et al., Defendants-Appellees.	No. 98-55045 DC# CV-97-4112-LGB Central California (Los Angeles) ORDER (Filed Febr. 13, 1998)

Before: PREGERSON, CANBY, and LEAVY, Circuit Judges

A review of the record demonstrates that this court lacks jurisdiction over this appeal because the order challenged in the appeal is not final or appealable. *See* Fed. R. Civ. P. 54(b); *Chacon v. Babcock*, 640 F.2d 221 (9th Cir. 1981) (order is not appealable unless it disposes of all claims as to all parties or judgment is entered in compliance with rule). Consequently, this appeal is dismissed for lack of jurisdiction.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

MANOUTCHEHR YADEGAR Plaintiff, v. THE MAIN SUSPECT MARIA CHRISTINA SAPERSTEIN aka TAMAR EVENSAPIR YADEGAR; NORA MANELLA, U.S. ATTORNEY, FEDERAL BUREAU OF INVESTIGATION, BARBARA REINECKE, et. al. Defendants.	CV 97 - 4112 LGB (AJWx) ORDER GRANTING DEFENDANTS' MOTIONS to DISMISS (Filed Nov. 10, 1997)

I. INTRODUCTION

Defendants' motions to dismiss came on regularly for hearing on November 10, 1997. Having carefully considered the papers submitted and oral argument of counsel, the Court hereby GRANTS defendants' motions to dismiss.

II. PROCEDURAL BACKGROUND

On June 9, 1997, plaintiff Yadegar filed his original Complaint against The Main Suspect, Maria Christina Saperstein Yadegar aka Tamara Evensapir Yadegar, the State of Israel, Mahin Shokrian, and Said Shokrian, arising from events which took place in Israel surrounding

the dissolution of plaintiff's marriage. ("The Main Suspect," "Maria Christina Saperstein Yadegar," and "Tamara Evensapir Yadegar" all refer to the same person, hereafter referred to as "plaintiff's former wife.")

By July, 1997, in various pro per filings plaintiff had altered the defendants in the caption to add defendants Joseph Nourmand, Barbara Reinecke ("Reinecke"), and "Does 1-50, inclusive." On September 22, 1997, plaintiff filed the currently-operative (First) Amended Complaint ("AC") against plaintiff's former wife, U.S. Attorney Nora Manella ("Manella"), and the FBI. By Amendments filed September 17, 1997, plaintiff Yadegar identified Barbra Reinecke (erroneously spelled "Barbara") as Doe 2 and Manella (erroneously spelled "Mannela") as Doe 3. The AC states three causes of action:

(1) failure of U.S. Attorney to bring criminal prosecution against plaintiff's former wife;

(2) intentional infliction of emotional distress;

(3) failure to seek damages from the state of Israel for violation of international law.

The AC does not state against which defendants these causes of action are alleged. Moving defendants Manella and the Federal Bureau of Investigation ("FBI") are specifically named and referred to in each cause of action. Moving defendant Reinecke's name appears only in the caption; it does not appear in the body of the AC, nor is she described in any other identifying way.

Defendants Manella and FBI's Motion to Dismiss was filed October 9, 1997. Plaintiff's consolidated Response was filed October 21, 1997.

Defendant Reinecke's Motion to Dismiss was filed October 3, 1997. Attached to Reinecke's Motion to Dismiss is a Declaration, and the Motion itself contains a request that it be treated as a Motion for Summary Judgment should the Court take notice of this Declaration. Reinecke's Motion also includes a Motion for Attorney's Fees and Costs pursuant to Rule 54(d)(2) and Rule 56(g).

III. Legal Standard for Motion to Dismiss Under Rule 12(b)(6)

Federal Rule of Civil Procedure 12(b)(6) provides for dismissal when the complaint fails to state a claim upon which relief can be granted. In reviewing a 12(b)(6) motion, a court must construe the complaint in a light most favorable to the plaintiff, accept all well-pleaded factual allegations as true, and determine whether the plaintiff can prove any set of facts to support a claim that would merit relief. *Neitzke v. Williams*, 490 U.S. 319, 326-7 (1989), *Cahill v. Liberty Mutual Insurance Co.*, 80 F.3d 336, 337-8 (9th Cir. 1996). Federal courts are particular liberal in construing "inartful pleading" by parties appearing pro se. *Hughes v. Rowe*, 449 U.S. 5 (1980). A Rule 12(b)(6) is generally regarded with disfavor and is rarely granted without leave to amend. *Hall v. City of Santa Barbara*, 833 F.2d 1270, 1274 (9th Cir. 1987), *cert. denied*, 485 U.S. 940 (1988).

In addition to allegations contained in the complaint itself the Court may consider materials attached to the complaint under Federal Rule of Civil Procedure 10(c) or incorporated by reference, whether introduced by plaintiff or defendant. *Kaufman and Broad-South Bay v. Unisys*

Corp., 822 F.Supp. 1468 (N.D. Cal. 1993). On a motion to dismiss, the court may also take judicial notice of matters of public record outside the pleadings. *MGIC Indemn. Corp. v. Weisman*, 803 F.2d 500 (9th Cir. 1986).

If a Rule 12(b)(6) motion presents matters outside the pleadings, and such evidence is considered by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56. Fed. R. Civ. P. 12(b), *Bonilla v. Oakland Scavenger Co.*, 697 F.2d 1297 (9th Cir. 1982). Whether to consider such evidence, and thus convert the motion into one for summary judgment, is in the discretion of the court. Fed. R. Civ. P. 12(b), *Skyberg v. United Food & Commercial Workers Int'l Union*, 5 F.3d 297 (8th Cir. 1993). Should the court elect to treat the motion as one for summary judgment, the opposing party must be made aware of this and be given a "reasonable opportunity" to present rebutting evidence. Fed. R. Civ. P. 12(b); *Mack v. South Bay Beer Distributors, Inc.*, 798 F.2d 1279, 1282 (9th Cir. 1986). The court's failure to give actual notice of its intent to convert may be harmless error if the opposing party was not prejudiced thereby, *EEOC v. Green*, 76 F.3d 19, 24 (1st Cir. 1996); for example, where the nonmoving party has submitted materials outside of the pleadings in support of its resistance to the motion to dismiss, *Madewell v. Downs*, 68 F.3d 1030, 1048 (8th Cir. 1995).

IV. Manella and FBI's Motion to Dismiss

A. Background

Plaintiff alleges that on or about January 12, 1995, he requested the United States Attorney's office in the

Central District of California ("USAO") to prosecute his former wife. (AC ¶ 6.) On or about April 17, 1995, the USAO, through an Assistant United States Attorney, issued a letter declining to prosecute, without stating the reasons behind the decision. (AC ¶ 7.) Subsequently, plaintiff submitted further information to the USAO, but "his pleas were unanswered." (AC ¶ 8.) Plaintiff also submitted information to the FBI, but it responded that no federal crime had been committed. (AC ¶ 9.) In early 1997, plaintiff unsuccessfully requested the USAO to prosecute attorney Nourmand for his alleged role in the alleged scheme against plaintiff. (AC, p. 4, 11. 17-21.) Plaintiff also requested defendants "to seek damages from Israel for having violated Plaintiff's human rights as protected under the international law of human rights and the law on the responsibility of states for injuries to aliens." (AC ¶ 20.) Plaintiff seeks damages resulting from defendants' failure to prosecute, as well as unspecified compensatory and punitive damages. (AC, p. 10.) He also seeks declaratory and injunctive relief, including "an injunctive order on the defendants to order defendants to bring a criminal indictment against Plaintiff's former wife and also seek damages from Israel on behalf of Plaintiff." (AC ¶ 24-25.)

B. Discussion

1. Sovereign immunity bars claims against Manella and the FBI

The United States is a sovereign and, as such, is immune from suit unless it has expressly waived such immunity and consented to be sued. *United States v. Shaw,*

309 U.S. 495, 500-1 (1940); *Gilbert v. DaGrossa*, 756 F.2d 1455, 1458 (9th Cir. 1985). The United States has not waived its sovereign immunity with respect to constitutional tort claims. *Rivera v. United States*, 924 F.2d 948, 951 (9th Cir. 1991). Under *Gilbert*, supra at 1458, naming federal employees in their official capacity as defendants does not avoid the bar of sovereign immunity, as a suit against a federal employee in her official capacity is essentially a suit against the United States. Where there is no express statutory authorization to sue, dismissal of claims against federal employees in their official capacity is required. *Gilbert*, supra; *Daly-Murphy v. Winston*, 837 F.2d 348, 355 (9th Cir. 1987). In *FDIC v. Meyer*, 510 U.S. 471 (1994), the Supreme Court held that a plaintiff may not bring a constitutional tort claim (a "*Bivens*" action) against a federal agency.

A common law tort claim must be submitted timely to the federal agency involved and have it denied or deemed denied before filing a lawsuit which includes such claims. 28 U.S.C. § 2675(a). If plaintiff fails to allege having done so, his claim is appropriately dismissed with leave to amend. *Gillespie v. Civiletti*, 629 F.2d 637, 640 (9th Cir. 1980). However, a common law tort cannot be maintained against a federal agency. The Federal Tort Claims Act, 28 U.S.C. § 1346(b) and § 2671-2680 governs common law tort actions against federal employees, but the only proper defendant is the United States; federal agencies cannot be sued in their own names. 28 U.S.C. § 2679(a); *Allen v. Veterans Administration*, 749 F.2d 1386, 1388 (9th Cir. 1984).

It appears from the wording of the AC that Manella has been sued in her official capacity. For example, the

AC states, "Plaintiff is informed and believes and thereon alleges that both defendants, the U.S. Attorney and the Federal Bureau of Investigation . . . are entities of the United States Federal Government." (AC ¶ 2.) Plaintiff has alleged no waiver of sovereign immunity. Therefore, plaintiff's claims against Manella in her official capacity are barred by sovereign immunity under *Shaw, Gilbert, Rivera,* and *Daly-Winston,* supra. Similarly, plaintiff's claims against the FBI are barred under *Meyer,* supra. Plaintiff's claims against Manella in her official capacity and against the FBI are DISMISSED WITH PREJUDICE.

Plaintiff has not alleged that he submitted a timely tort claim to the USAO or FBI, and thus plaintiff's second cause of action for intentional infliction of emotional distress should be dismissed with leave to amend under *Gillespie,* supra. However, any common law tort claims against the FBI are DISMISSED WITH PREJUDICE under *Allen,* supra.

2. Manella is not liable in her individual capacity as a supervisor

A supervisor cannot be held personally liable for damages for actions in which she had no personal involvement. *Mackinney v. Nielsen,* 69 F.3d 1002 (9th Cir. 1995); *Terrell v. Brewer,* 935 F.2d 1015, 1018 (9th Cir. 1991).

Plaintiff has not alleged the personal involvement of Manella in the decision not to prosecute plaintiff's former wife and others. The AC states that "On or about April 17, 1995, the U.S. Attorney, Nora Mannela [sic], through her Assistant U.S. Attorney, Jeffrey C. Eglash, without stating any reasons declined to prosecute." (AC ¶ 7.)

Therefore, any claims against Manella in her individual capacity are also DISMISSED WITH PREJUDICE.

3. Attempts to enjoin prosecution of plaintiff's former wife and the State of Israel do not state a claim

The Government retains significant discretion as to whom to prosecute. *United States v. Carrasco,* 786 F.2d 1452, 1455 (9th Cir. 1986); *United States v. Pitts,* 908 F.2d 458, 460 (9th Cir. 1990). Such decisions are ill-suited to judicial review. *Wayte v. United States,* 470 U.S. 598, 607 (1985).

Plaintiff seeks an order enjoining the USAO to prosecute his former wife (AC ¶ 24-25). Such relief is not available under *Carrasco, Pitts,* and *Wayte,* supra. Plaintiff's third claim for relief seeks an order compelling the USAO to seek damages from Israel. (AC ¶ 20.) Plaintiff has cited no statutory or caselaw in support of such relief, and the third claim for relief should therefore be DISMISSED.

IV. Reinecke's Motions to Dismiss and for Attorney's Fees

A. Background

Defendant Reinecke is a former attorney of plaintiff Yadegar, who prevailed against Yadegar in a series of actions for unpaid attorney's fees. (Reinecke Decl. § 9-12.) Plaintiff Yadegar's Amendment of his complaint identifying Reinecke as "Doe 2" occurred simultaneously with

Reinecke's service of a Writ of Execution on Yadegar's bank regarding these unpaid fees. (Reinecke Decl. § 9-10.)

Reinecke has testified that Yadegar only began accusing her of being part of the alleged "conspiracy" when she informed him she would not represent him unless and until he paid his past due fees. (Reinecke Decl. ¶ 6-7.) She has also testified that she refused to perform certain items of work for him because she felt they were improper. (Reinecke Decl. § 7-9.) Finally, she has testified that he explicitly threatened to bring her into this action, including by the use of false affidavits. (Reinecke Decl. ¶ 6, 9.)[1]

B. Motion to Dismiss Under Rule 12(b)(6)[2]

As stated above, plaintiff's AC makes no allegations specifically mentioning Reinecke, or describing any person who might be Reinecke.

Specifically in his First Cause of Action, plaintiff refers to a "former attorney" in § 8, but the date is May 23, 1996, before Reinecke represented him. The following sentence appears in ¶ 12 of the AC, "Plaintiff other attorneys you should have known for a long time [sic]." It is unclear to whom Yadegar is referring. Plaintiff claims to

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[1] Statements drawn from Reinecke's Declaration are used to provide background only, and have not been considered by the Court in deciding Reinecke's Motion to Dismiss.

[2] Reinecke has attached her own Declaration to the Motion to Dismiss, and requests that this evidence be considered and the Motion converted to one for summary judgment. The Court declines to do so.

have "proved criminal conspirasy [sic] between both sides attorneys behind the scene" (AC ¶ 12) in a case plaintiff appealed June 6, 1997, but has not attached the case (CL036312, 2 App. Dist.).

The Second Cause of Action, intentional infliction of emotional distress, is alleged exclusively on the basis of the U.S. Attorney's alleged failure to prosecute his former wife. The Third Cause of Action, failure to seek damages from the state of Israel, alleges only the "U.S. Government's" failure to act.

In Opposition to Reinecke's motion, Plaintiff argues, in essence, that Reinecke conspired with defendants Nourmand and Manella during Reinecke's conspired with defendants Nourmand and Manella during Reinecke's representation of Yadegar from approximately August, 1996 until approximately April, 1997, in a way which contributed to the U.S. Attorney's alleged inaction on Yadegar's behalf. However, these allegations do not appear in the Amended Complaint, and thus cannot cure defects *in the Amended Complaint* which form the basis of the motion to dismiss. *See, e.g., Levine v. Diamanthuset, Inc.*, 950 F.2d 1478, 1483 (9th Cir. 1991).

Plaintiff has failed to allege any wrongdoing by Reinecke in his Amended Complaint, and her Motion to Dismiss under Rule 12(b)(6), for failure to state a claim upon which relief can be granted, should therefore be GRANTED.

B. Motion for Attorney's Fees

Reinecke also moves for attorney's fees under Rule 54(d)(2).[3] Rule 54(d)(2) provides for attorney's fees after judgment; a party who is unnecessarily made a party is entitled to her costs upon dismissal. *Kedrick v. Heintzleman,* 141 F.Supp. 633 (D.Ak. 1956). The Court may award costs to a defendant who prevails on a motion to dismiss for failure to state a claim. *Lepucki v. Van Wormer,* 587 F.Supp. 1390 (D.C. Ind. 1984), aff'd 765 F.2d 86, cert. denied 474 U.S. 827 (1985).

In Reinecke's Declaration, she requests "fees and costs" of $500, for two hours' legal work at her regular hourly rate of $250.00 per hour, associated with "bring[ing] this Motion to squelch Mr. Yadegar's malicious attempt to vex, annoy, and harass me." (Reinecke Decl. ¶ 14.) Reinecke has prevailed on her instant Motion to Dismiss plaintiff's claim for failure to state a claim against her. She is therefore a prevailing party "unnecessarily made a party," and entitled to attorney's fees under *Kedrick* and *Lepucki,* supra.

Reinecke's motion for attorneys' fees pursuant to Rule 54(d)(2) is hereby GRANTED. *Plaintiff is ORDERED*

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[3] Reinecke also moves for attorney's fees pursuant to Rule 56(g). As this Court has declined to convert her motion into one for summary judgment, Rule 56(g), which permits the Court to order a party who presents affidavits made in bad faith pursuant to a motion for summary judgment to pay to the other party the amount of the reasonable expenses which the filing of the affidavits caused the other party to incur, including reasonable attorney's fees, is inapplicable.

to pay attorney's fees to Reinecke in the amount of $500.00 within thirty days of the entry of this Order.

Plaintiff is also advised that any motion for leave to amend the complaint to state a claim against Reinecke shall be reviewed closely under the standards set out in Rule 11 and applicable caselaw. Fed. R. Civ. P. 11 reads, in pertinent part, that a party submitting any papers to the court "is certifying to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances, – (1) it is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation." Fed. R. Civ. P. 11(b)(1). Pleadings or motions may be sanctionable if they constitute "bad faith," *see, e.g., In re Itel Securities Litig.*, 791 F.2d 672, 675 (9th Cir. 1986), and the filing of successive motions may be sanctionable as "Harassment" under Rule 11. *Aetna Life Ins. Co. v. Alla Medical Services, Inc.*, 855 F.2d 1470, 1477 (9th Cir. 1988). Should the Court find that plaintiff has presented such a motion to harass or for any other improper purpose, further sanctions may be awarded.

V. CONCLUSION

Despite the special leniency granted by *Hughes v. Rowe* to pro se litigants in the motion to dismiss context, plaintiff Yadegar has failed to state a claim upon which relief can be granted as to either defendants Manella and the FBI, or defendant Reinecke, and their motions to dismiss should therefore be GRANTED. For reasons stated above, Manella and the FBI's motion to dismiss is

GRANTED WITH PREJUDICE. Reinecke's motion for attorney's fees in the amount of $500.00 is GRANTED.

IT IS SO ORDERED.

Dated: November 10, 1997

/s/ Lourdes G. Baird
LOURDES G. BAIRD
United States
District Judge

18 U.S.C. § 1204. International parental kidnapping

(a) Whoever removes a child from the United States or retains a child (who has been in the United States) outside the United States with intent to obstruct the lawful exercise of parental rights shall be fined under this title or imprisoned not more than 3 years, or both.

(b) As used in this section –

(1) the term "child" means a person who has not attained the age of 16 years; and

(2) the term "parental rights", with respect to a child, means the right to physical custody of the child –

(A) whether joint or sole (and includes visiting rights); and

(B) whether arising by operation of law, court order, or legally binding agreement of the parties.

(c) It shall be an affirmative defense under this section that –

(1) the defendant acted within the provisions of a valid court order granting the defendant legal custody or visitation rights and that order was obtained pursuant to the Uniform Child Custody Jurisdiction Act and was in effect at the time of the offense;

(2) the defendant was fleeing an incidence or pattern of domestic violence;

(3) the defendant had physical custody of the child pursuant to a court order granting legal custody or visitation rights and failed to return the child as a result of circumstances beyond the defendant's control, and the

defendant notified or made reasonable attempts to notify the other parent or lawful custodian of the child of such circumstances within 24 hours after the visitation period had expired and returned the child as soon as possible.

(d) This section does not detract from The Hague Convention on the Civil Aspects of International Parental Child Abduction, done at The Hague on October 25, 1980.